

GOODMAN & SAPERSTEIN

COUNSELLORS AT LAW

By ECF

May 8, 2013

Hon. Kiyo A. Matsumoto  
United States District Court  
Eastern District of New York  
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Brooklyn, New York 11201

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STANLEY R. GOODMAN  
MARTIN I. SAPERSTEIN

**Re: Innovation Ventures, LLC, et al. v. Ultimate One Distributing Corp., et al.**  
1:12-cv-5354

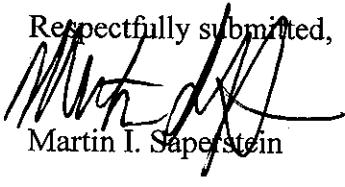
Dear Judge Matsumoto:

I write on behalf of Defendants Food Distributors International, Inc. and Scott Tilbrook (collectively, "FDI Defendants") and Purity Wholesale Grocers, Inc. ("Purity Wholesale"), in response to Defendants Joseph Shayota's, Adriana Shayota's and Tradeway International, Inc. d/b/a Baja Exporting's (collectively, "Baja Defendants"), May 7, 2013 letter requesting an immediate stay of this action as to them, pending completion of a criminal investigation by the United States Attorney for the Northern District of California. We join with Plaintiffs in opposing this request.

Both the FDI Defendants and Purity Wholesale have interposed cross-claims against the Baja Defendants, seeking, inter alia, full indemnification, based upon the purchases the aforesaid Defendants made of the 5-Hour Energy products from the Baja Defendants. Obviously, the Food Distributors Defendants and Purity Wholesale would suffer substantial prejudice if the action against the Baja Defendants was indefinitely stayed.

Our clients are entitled to have their cross-claims against the Baja Defendants adjudicated in tandem with Plaintiffs' claims against them, in the event that Plaintiffs are awarded damages, given the derivative nature of the Baja Defendants' liability to our clients. As Plaintiffs have pointed out, none of the Baja Defendants have been charged or indicted, or are even the recipient of a target letter from the United States Attorney. Further, the individual Baja Defendants are free to assert their Fifth Amendment privileges at any deposition or trial.

Finally, we wish to point out that the Baja Defendants have contested jurisdiction over their persons. A stay would leave the jurisdictional issue undetermined as well, which would further add to the delay. In sum, Baja Defendants' motion for a stay should be summarily denied.

Respectfully submitted,  
  
Martin I. Saperstein

MIS:pb

cc: Geoffrey Potter, Esq. via email and ECF

David M. Greeley, Esq. via email and ECF

J. Bruce Maffeo via email and ECF